

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

704 KAR 7:160, Use of Restraint and Seclusion in Public Schools (New regulation; Second Reading)

Applicable Statute or Regulation:

KRS 156.160 (1) (g)

Action Question:

Should the Kentucky Board of Education (KBE) give final approval to 704 KAR 7:160?

History/Background:

Existing Policy. Kentucky currently has no statute or regulation on the use of restraint or seclusion in public schools. At its December 2011 meeting, the KBE reviewed a draft of the restraint and seclusion regulation for the first time. At the urging of stakeholder groups, KDE withdrew the regulation from consideration in order to gather more feedback. Also, policies in states across the country were reviewed. The regulation then came back to the board at its April 4, 2012 meeting for another first reading and to gather more feedback.

Since the April board meeting, the United States Department of Education (USED) released guidance on May 15 to assist states, districts and schools as they implement policy related to the use of restraint and seclusion. (Attachment A) Now the regulation is coming forward for action at the June board meeting.

The issues that have been addressed since the April meeting related to the regulation are as follows:

- A representative of the medical community has reviewed the regulation and provided recommendations for revision.
- Stakeholders have reviewed the regulation and provided additional feedback on the issues such as the standard for when restraint and seclusion may be used; the role property damage should play in determining whether a student should be restrained; the role educational environment disruption should play in determining whether a student should be restrained; and whether school resources officers should be included or excluded from this regulation.
- The regulatory language has been aligned with the guidance document issued by USED on May 15.

Disagreement among stakeholders still exists related to the following issues:

- The inclusion of property damage as a justification for the use of physical restraint or seclusion;
- The standard for physical restraint or seclusion;
- Educational environmental disruption as a justification for the use of physical restraint or seclusion; and
- Exemption of school resource officers from the regulation.

Staff considered all feedback, reviewed policies of other states and reviewed the recently released USED Resource Document and recommends the issues listed above be represented in the regulation as follows:

- The risk of property damage should not be a justification for the use of physical restraint or seclusion in the absence of imminent danger of serious harm to self or others.
- The standard for physical restraint and seclusion should be imminent danger of serious physical harm to self or others.
- Disruption of the educational environment should not be a justification for the use of physical restraint or seclusion in the absence of imminent danger of serious physical harm to self or others.
- Because of their specialized training as police officers, school resource officers (SROs), who are sworn officers of the law, will be exempt from this regulation. However, data will be collected through the student information system as to the number of times SROs are involved in physical restraint and seclusion incidents.

Staff Recommendation and Rationale:

Staff recommends that the Kentucky Board of Education approve 704 KAR 7:160. The regulation aligns with federal guidance on the issue and is vital to the safety and welfare of students.

Groups Consulted and Brief Summary of Responses:

The Local Superintendents Advisory Council reviewed this regulation at its November 2011, March 2012 and May 2012 meetings and provided feedback. A letter from that body will be received prior to the June meeting.

The stakeholder group convened in 2009 was recently brought together again in October 2011 and January 2012 to review the draft regulation. The stakeholder group included representatives from the Kentucky School Boards Association; the Department of Behavioral Health, Development and Intellectual Disabilities; Protection and Advocacy; the parent of a high school student; Center for School Safety; Directors of Special Education; Special Education Cooperatives; KECSAC; and behavior consultants/school psychologists. The areas where consensus could not be reached are listed above.

Impact on Getting to Proficiency:

The use of positive behavior supports, as opposed to physical restraint and seclusion, is an evidenced-based practice that, if done correctly, is successful at maintaining students in their learning environment. The delivery of instruction in a safe learning environment not only assists students with problem behaviors in getting to proficiency, it allows the rest of the class to receive instruction in a safe environment.

Contact Person:

Felicia C. Smith
Associate Commissioner
Office of Next Generation Learners
502-564-9850
Felicia.Smith@education.ky.gov

Kevin Brown
Associate Commissioner
Office of Guiding Support Services
502-564-4474
Kevin.Brown@education.ky.gov

Commissioner of Education**Date:**

June 2012